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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/375,451	08/17/1999	GUY L. MCCLUNG III	GLM-III	5100

7590 12/20/2002  
GUY L MCCLUNG  
III SUITE 347  
16690 CHAMPION FOREST DRIVE  
SPRING, TX 773797023

EXAMINER

ALVAREZ, RAQUEL

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 12/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/375,451

Applicant(s)

MCCLUNG III, GUY L.

Examiner

Raquel Alvarez

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 9/27/02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 38-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. In view of the appeal brief filed on 9/27/2002, PROSECUTION IS HEREBY REOPENED. As set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

2. Claims 38-54 are presented for examination.

### **Claim Objections**

3. Claims 38, 47 and 54 are objected to because of the following informalities:

Each step of the claim should end with a semicolon to differentiate the elements from the components.

Appropriate correction is required.

### **Claim Rejections - 35 USC § 101**

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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4. With respect to claims 47-54 the claims are non-statutory because the claims are not in the "technological" or "useful" arts, and the claims do not affect or define the technology. See *In re Toma*, 197 USPQ 852 (CCPA 1978).

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 38<sup>54</sup> are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloomberg et al.(5,642,279 hereinafter Bloomberg) in view of Walker et al.(6,249,772 hereinafter Walker)..

With respect to claims 38, 39, 43-44, 46-50, 52, 54 Bloomberg teaches a method for guaranteeing a consumer a best price on an item purchased from a vendor in a consummated final first transaction at a first price (abstract). Recording the first price and information identifying the consumer (col. 3, lines 50-57); noting any price lower than the first price for the item during the predetermined time period following the purchase of the item col. 3, lines 62-, col. 4, lines 1-26); calculating a money-value difference between the first price and said any price lower than the first price and refunding to the consumer an amount equal to the money value difference (Figure 2); wherein the item is purchased via a host system and the host system records the first

price and information identifying the customer; the host system conducts the monitoring, noting and calculating steps; and the host system provides the refund to the consumer (see figure 1 and col. 3, lines 19-34).

With respect to the host system provides the refund by crediting an account of the consumer. Bloomberg teaches printing a check to the consumer (see figure 2).

Bloomberg does not specifically teach crediting an account of the consumer. Walker teaches system providing the refund by crediting an account of the consumer (col. 22, lines 17-33). It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to include in the system of Bloomberg of crediting an account of the consumer because such a modification would allow the system of Bloomberg to immediate provide the refund rather than having to wait for the refund to be mailed.

Claim 40 further recites that the item is purchased by the consumer on-line. . Bloomberg does not specifically teach that the consumer is making the purchasing on-line. Since, Bloomberg teaches that a PC may be utilized (col. 3, lines 28-34) and Walker teaches on figure 1, the customer using his PC to connect on-line to the vendor then it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included conducting the purchases on-line because such a modification would the customer to make purchases in the convenience of his or her home.

With respect to claim 41, the combination of Bloomberg and Walker do not specifically teach that the account is an account of the consumer with the host system.

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Official notice is taken that it is old and well known for vendors to establish an account for the consumers in the form of an in-store credit card or the like. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included crediting an account with the host system because such a modification would motivate the consumers to buy additional items with the vendor since he or she has already a credit with them.

Claim 42 further recites that a refund is made for each subsequent sales price lower than the first price. Since Bloomberg teaches guaranteeing a consumer the best prices then it would have been obvious to a person of ordinary skill in the art to refund the consumers for each subsequent sales price lower than the first price because such a modification would allow the customer to get the lowest price each time the product is purchased.

Claim 45 further recites that only items sold by the vendor involved in the first transaction are taken into account in the noting step. Bloomberg teaches noting by another within a predetermined time period. Bloomberg does not specifically teach that the noting of the lowering price is only performed for the vendor involved in the first transaction.

Claim 51 further recites duplicating any incentive accompanying sales of the item after the first transaction. Official notice is taken that is old and well known to duplicate an incentive. For example, double coupons are well known in the retail market in order to motivate consumers to purchase at a certain location . It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included

duplicating any incentive accompanying sales of the item after the transaction for the above mentioned advantages.

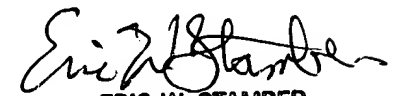
Claim 53 further recites providing a warranty to the consumer. Since, Walker is a system and method of selling an item and like any conventional method of selling a product often provides a warranty on the item purchased in order to assure the customer the integrity of a product and of the maker's responsibility for the repair or replacement of defective parts. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included providing a warranty to the consumer for the above mentioned advantages.

**Point of contact**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raquel Alvarez whose telephone number is (703)305-0456. The examiner can normally be reached on 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W. Stamber can be reached on (703)305-8469. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9326 for regular communications and (703)872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

  
ERIC W. STAMBER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600